

REMARKS

The Applicant respectfully requests entry of the above amendments, and consideration of the application, as amended.

By this amendment, the Applicant has amended claims 1, 7, 23, 30, and 35 to more precisely recite aspects of the present invention. No new matter has been introduced.

Claims 1-9, 11, 23-27, 29-39, 41, 42, and 55-61 remain pending in this application.

1. Response to 35 USC §112 Rejection

In paragraphs 1-3 on page 2 of the Action, the Patent Office rejected claim 7 under 35 U.S.C. §112, second paragraph, as being indefinite. The Patent Office states that it is unclear how the diverter can divert water away from the water inlets when the diverter is position in a conduit between the manifold outlets and the set of water inlets. In an effort to respond to the Patent Office's query, the Applicant directs the Patent Office to Figure 2 of the present invention and to the diverter 75 positioned in one of the conduits 54 between one of the manifold outlets 59 and the water inlet 46. According to one aspect of the invention, diverting device 75 diverts water away from water inlets 46. It is hoped that this clarifies this issue for the Patent Office. Though the Applicant believes that this aspect of the invention was clearly recited in the existing claims, in the above amendment the Applicant amended claim 7 in a manner which the Applicant hopes may address any confusion that Patent Office may still have.

If this claim remains a source of confusion for the Patent Office, the Applicant's undersigned Agent requests that the Patent Office call him at the number provided to resolve this matter.

2. Response to Anticipation Rejection based upon Gardenier

In paragraphs 4 and 5 on pages 2-5 of the Action, the Patent Office rejected claims 1, 3, 4, 6, 8, 9, 10, 11, 23-27, 29, 30, 32-39, 41, 42, and 55-61 under USC 102(b) as anticipated by U.S. Patent 6,185,757 of Gardenier [herein “Gardenier”]. The Applicant respectfully submits that this rejection is inappropriate and requests that this rejection be reconsidered and withdrawn based upon the above amendment and the following comments and observations.

First, the Applicant brings to the Patent Office’s attention that the present Applicant is the same W. John Gardenier that appears as the first named inventor on Gardenier. Thus, the Applicant is intimately familiar with the invention disclosed in Gardenier and its limitations that are addressed by aspects of the present invention, which will be discussed below.

Second, as discussed in the Response dated June 24, 2005 (the disclosure of which is incorporated by reference herein in its entirety), MPEP § 2131 provides guidelines under which an anticipation rejection is appropriate (these are not repeated here for brevity). The Applicant respectfully submits that Gardenier does not include “each and every element” of the invention recited in the amended claims, nor does Gardenier show the invention “in as complete detail” as the amended claims.

With respect to the anticipation rejection of claims 1, 23, 30, and 35, each of these claims was amended in the above amendment to recite that the diverting device be distinct from the manifold recited in these claims. That is, as shown in Figure 2 of the present application, for example, these claims now recite that the diverting device or valve 70 be a distinct device different from manifold 56. In the paragraph bridging pages 2 and 3 of the Action, the Patent Office identified structure 402 of Gardenier as the claimed “manifold” and structure 404 as the “user operable diverter.” The Applicant submits that examination of Figures 4 and 5 Gardenier shows that the perforated inner pipe 404 and outer pipe 402 having nozzles 410 cooperate to provide a valving mechanism to distribute water to a plurality of water jets 212, 214, 216, etc. However,

the Applicant submits that these structures of Gardenier clearly do not provide the function and advantages of the present invention and are not provided as distinct devices as presently recited in amended claims 1, 23, 30, and 35.

In a phone conversation on October 6, 2005, the Applicant's undersigned Agent discussed this distinction of the present invention from Gardenier with Examiner Huyen Lee. Examiner Lee acknowledged that Gardenier did not disclose a system in which the diverting device was distinct from the manifold and he suggested that such an amendment may distinguish from Gardenier. The Applicant acknowledges with appreciation Examiner Lee's assistance in advancing this application to allowance.

The Applicant also notes that the system of Gardenier does not provide at least one of the advantages of the present invention. Gardenier actually is another prior art reference over which the present invention is an improvement. As discussed in paragraphs 0003 and 0004 of the instant application, the prior art is characterized by systems in which varying the flow of water out of a water jet can dramatically affect the velocity of water out of other related water jets. For example, reducing the flow of water through one water jet may undesirably increase the velocity of water flow to other nozzles, which can be uncomfortable to the bather. Aspects of the present invention, address this concern by allowing the bather to redirect flow away from one or more water jets and forward it, for example, to a foot well, without causing an undesirable increase in flow to other water jets.

Gardenier is another example of the prior art that is also characterized by the undesirable increased flow to water jets. For example, with reference to Figure 8 of Gardenier, by reducing the flow of water out of, for example, nozzle 206 of Figure 8 by adjusting valve 102 (assuming an uninterrupted constant supply of water to valve 102), the flow of water out of nozzles 208, 210, 212, 214, and 216 must increase to reestablish the flow balance. Again, like other prior art systems, this increase in flow in the other nozzles may be uncomfortable to the bather. Aspects of the present invention overcome this disadvantage of Gardenier and other similar prior art systems.

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Amendment dated December 20, 2005  
Reply to Office Action of September 20, 2005

The Applicant submits that Gardenier does not anticipate the inventions recited in claims 1, 23, 30, and 35. The Applicant respectfully requests that these anticipation rejections based upon Gardenier be reconsidered and withdrawn.

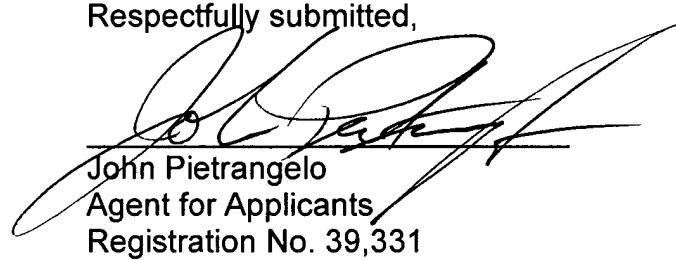
With respect to the rejection of claims 3, 4, 6, 8, 9, 10, 11, 24-27, 29, 32-34, 36-39, 41, 42, and 55-61 as anticipated by Gardenier, these rejections are inappropriate for the same reasons that the rejections of claims 1, 23, 30, ad 35 from which they depend, are inappropriate. The Applicant respectfully requests that these rejections be reconsidered and withdrawn.

### 3. Conclusion

The Applicant believes that the Amendment overcomes the rejections of the subject Office Action and places the application in condition for allowance. An early and favorable action on the merits of the application is requested.

If a telephone conference would be of assistance in advancing prosecution of the subject application, the Applicant's undersigned Agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,



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